



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2010-0027]

Hours of Service of Drivers: RockTenn, Application for Renewal of Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for renewal of exemption; request for comments.

SUMMARY: RockTenn has requested a renewal of its exemption from certain provisions of the hours-of-service (HOS) requirements for drivers of property-carrying vehicles. RockTenn currently holds an exemption for the period April 17, 2012, through April 16, 2014 for 11 shipping department employees and occasional substitute commercial driver's license (CDL) holders who transport paper mill products over a 275-foot stretch of public road between its shipping and receiving locations. RockTenn requested an exemption from the 14-hour rule and the requirement for 10 consecutive hours off duty before the start of the work day. The renewal of the exemption would allow these individuals occasionally to drive after the 14th hour after coming on duty and allow them to return to work following 8 consecutive hours off-duty. FMCSA requests public comment on the RockTenn application for exemption.

DATES: If granted, this exemption would be effective during the period of April 17, 2014 through April 16, 2016. Comments must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER.]

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA-2010-0027 by any of the following methods:

- Federal eRulemaking Portal: Go to www.regulations.gov. In the ENTER KEYWORD OR ID box enter FMCSA-2010-0027 and click on the tab labeled SEARCH. On the ensuing page, click on any tab labeled SUBMIT A COMMENT on the extreme right of the page and a page should open that is titled “Submit a Comment.” You may identify yourself under section 1, ENTER INFORMATION, or you may skip section 1 and remain anonymous. You enter your comments in section 2, TYPE COMMENT & UPLOAD FILE. When you are ready to submit your comments, click on the tab labeled SUBMIT. Your comment is then submitted to the docket; and you will receive a tracking number.
- Fax: 1-202-493-2251.
- Mail: Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE, West Building, Ground Floor, Room W12-140, Washington, D.C. 20590-0001.
- Hand Delivery: West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number. For detailed instructions on submitting comments and additional information on the exemption process, see the Public Participation heading below. Note that all comments received will be posted without change to www.regulations.gov, including any personal information provided. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments received, go to www.regulations.gov at any time, and in the ENTER KEYWORD OR ID box enter FMCSA-2010-0027 and click on the tab labeled SEARCH.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the U.S. Department of Transportation's online privacy policy at www.dot.gov/privacy or the complete Privacy Act Statement in the **Federal Register** published on January 17, 2008 (73 FR 3316).

Public Participation: The www.regulations.gov website is generally available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the “help” section of the www.regulations.gov website. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards, Telephone: 202-366-4325. E-mail: MCPSD@dot.gov.

SUPPLEMENTARY INFORMATION:

RockTenn Application for Exemption

The HOS rules in 49 CFR 395.3(a)(1) and (a)(2) prohibit a property-carrying CMV driver from driving a CMV after the 14th hour after coming on duty following 10 consecutive hours off duty. Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption from the HOS requirements for a maximum 2-year period if it finds such

exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The procedures for requesting an exemption (including renewals) are prescribed in 49 CFR part 381.

RockTenn (USDOT 153734) operates a paper mill located in Chattanooga, Tennessee, its principal place of business. Its shipping and receiving departments are on opposite sides of the paper mill, requiring driver/employees to travel on a public road to shuttle trailers as needed. These drivers utilize this public road – Compress Street – an average of forty times per day to go from their shipping to receiving department and to load their trailers in the shipping department. These drivers do not transport any material farther than the paper mill lots and/or Compress Street. The distance traveled on Compress Street is approximately 275 feet in one direction, and one tractor is used to perform this work. Because the material being transported is received from or destined for other States, the local travel is interstate in nature.

The initial RockTenn exemption application for relief from the HOS rule was submitted in 2009; a copy of the application is in the docket. That application fully described the nature of shipping operations encountered by CMV drivers employed by RockTenn.

RockTenn’s shipping department currently works 12-hour shifts for 4 days, and then allows employees 4 days off duty. The schedule is subject to change. Usually there are two shipping department employees on each shift. One employee drives a fork-lift truck loading trailers with finished goods, and the other operates the tractor shuttling trailers. These employees do not drive a CMV continuously during their shift(s).

At times, RockTenn may operate on three 8-hour shifts with employees working a double (16-hour) shift when “rotating back.” According to RockTenn, the problem

arises because of the double-shift, and also on occasion when a shipping department driver does not report for work as scheduled. On a Monday, for example, if an individual worked the weekend, his or her shift would normally have to “hurry back” within 8 hours. As a result of the mandatory 10 hours off-duty requirement for drivers, without the exemption RockTenn would be required to schedule these drivers’ shifts to start later than other employees. This would create at least 2 hours when the company cannot load or transport trailers with finished goods due to the absence of the drivers. Furthermore, as a result of the 14-hour driving windows, they would “work short” without the exemption, creating on-time delivery issues for other employees, who are allowed to work an entire “double shift” (16 hours) when necessary.

RockTenn requested a limited exemption from 49 CFR part 395 for its shipping department CMV drivers, as well as others with a valid CDL who on occasion must substitute, allowing all such drivers to drive as late as the 16th hour since coming on duty and return to work with a minimum of at least 8 hours off duty. If exempt from the normal HOS requirements, these employees could follow the same work schedule as other RockTenn employees on their shift, and would be able to work for the full 16 hours of a “double shift.” RockTenn could therefore minimize the chances of delayed shipments that might occur if their drivers were not allowed to work the same schedule as other employees.

RockTenn acknowledged in its application that these drivers would still be subject to all of the other FMCSRs, including possessing a CDL, random drug testing, medical certification, and other driver-qualification requirements.

A copy of RockTenn’s application for exemption renewal is available for review in the docket for this notice.

Terms of the Exemption

Period of the Exemption

The requested exemption is proposed to be effective April 17, 2014, through 11:59 p.m. on April 16, 2016, for drivers employed by RockTenn operating CMVs on Compress Street in Chattanooga, Tennessee, between the company's shipping and receiving departments.

Extent of the Exemption

The exemption would be restricted to drivers employed by RockTenn operating CMVs on the route specified above. This exemption would be strictly limited to the provisions of 49 CFR 395.3(a)(1), referring to a required minimum of 10 hours off duty before the start of a duty period, and 395.3(a)(2), commonly referred to as the "14-hour rule." When operationally necessary, drivers would be allowed up to a 16-hour duty period and no fewer than 8 hours off duty prior to the duty period.

Preemption

During the period this exemption would be in effect, no State would be allowed to enforce any law or regulation that conflicted with or was inconsistent with this exemption with respect to a firm or person operating under the exemption (49 U.S.C. 31315(d)).

Notification to FMCSA

RockTenn would be required to notify FMCSA within 5 business days of any accident (as defined in 49 CFR 390.5), involving any of the motor carrier's CMVs operating under the terms of this exemption. The notification would be required to include the following information:

- a. Date of the accident,

- b. City or town, and State, in which the accident occurred, or closest to the accident scene,
- c. Driver's name and driver's license number,
- d. Vehicle number and state license number,
- e. Number of individuals suffering physical injury,
- f. Number of fatalities,
- g. The police-reported cause of the accident,
- h. Whether the driver was cited for violation of any traffic laws, motor carrier safety regulations, and
- i. The total driving time and total on-duty time period prior to the accident.

Reports filed under this provision would be e-mailed to MCPSD@DOT.GOV.

Termination

The FMCSA does not believe the drivers covered by this exemption, if granted, would experience any deterioration of their safety record. However, should this occur, FMCSA would take all steps necessary to protect the public interest, including revocation of the exemption. The FMCSA would immediately revoke the exemption for failure to comply with its terms and conditions.

Issued on: January 10, 2014

Larry W. Minor
Associate Administrator for Policy

[FR Doc. 2014-01695 Filed 01/28/2014 at 8:45 am; Publication Date: 01/29/2014]